

RECEIPT # 163954
AMOUNT \$ 250
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LOCAL RULE 4.1
WAIVER FORM
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BY DPTY. CLK. M
DATE 4-23-05

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES LANGONE, as FUND MANAGER
of the NEW ENGLAND TEAMSTERS AND
TRUCKING INDUSTRY PENSION FUND

Plaintiff,

v.

WASTE MANAGEMENT OF
MASSACHUSETTS, INC.,

Defendant.

C.A. No.

05 10821 RW

COMPLAINT

MAGISTRATE JUDGE Dein

1. This is an action under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001, *et seq.*, brought on behalf of the New England Teamsters and Trucking Industry Pension Fund (“Pension Fund”) for damages and injunctive relief arising from unpaid and delinquent contributions.
2. This court has jurisdiction pursuant to 29 U.S.C. §1132(e)(1) and venue lies in this district pursuant to 29 U.S.C. §1132(e)(2).
3. Plaintiff, Charles Langone, is the Fund Manager of the Pension Fund and is a “fiduciary” within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3). The Pension Fund is a “multi-employer plan” within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A), and is an “employee benefit plan” or “plan” within the meaning of Section 3(3) of ERISA, 29 U.S.C. §1002(3).
4. The Pension Fund has its principal office at and is administered from 535 Boylston Street, Boston, Massachusetts 02116-3770.

5. Defendant Waste Management of Massachusetts, Inc., is an employer with a business address at 1001 Fannin Street, Suite 4000, Houston, TX 77002, and a registered office at 101 Federal Street, Boston, MA 02110, and is an “employer” within the meaning of 29 U.S.C. §1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §142(1) and §152(2), (6), (7).
6. International Brotherhood of Teamsters, Local Union 379 (hereinafter “Local 379”) is a “labor organization” within the meaning of 29 U.S.C. §152(5).
7. At all material times, Defendant has been obligated by the terms of one or more collective bargaining agreements between Defendant and Teamsters Local 379 covering Defendant’s bargaining unit employees at 10 Poplar Street, Somerville, MA 02143, and by the terms of an Agreement and Declaration of Trust to which Defendant is bound to make contributions on behalf of certain employees to the Pension Fund and to pay late charges for contributions not timely paid pursuant to the terms of the Agreement.
8. The collective bargaining agreement between Defendant and Local 379 with effective dates of July 1, 1997 through June 30, 2002, required Defendant to make payments to the New England Teamsters and Trucking Industry Pension Fund for each and every employee performing work within the scope of and/or covered by the collective bargaining agreement, including regular, probationary, temporary, and casual employees, irrespective of an employee’s status as a member or non-member of Local 379.
9. The collective bargaining agreement between Defendant and Local 379 with effective dates of July 1, 2002 through June 20, 2007, required Defendant to make payments to

the New England Teamsters and Trucking Industry Pension Fund for each and every employee performing work within the scope of and/or covered by the collective bargaining agreement, including regular, probationary, temporary, and casual employees, irrespective of an employee's status as a member or non-member of Local 379.

10. In July, 2003, the Pension Fund conducted a payroll audit of Defendant for the years 1998 through 2002. Included within the audit were temporary employees performing work for Defendant within the scope of the collective bargaining agreement between Defendant and Local 379.
11. Since on or about January 1, 1998 and continuing to the present, Defendant has failed to make payments to the Pension Fund for temporary employees performing work for Defendant within the scope of the collective bargaining agreement, in violation of Section 515 of ERISA, 29 U.S.C. §1145.

WHEREFORE, Plaintiff demands that judgment enter against Defendant in accordance with Section 502 of ERISA, 29 U.S.C. §1132(g)(2):

1. By awarding the Pension Fund the following amounts:
 - a. the unpaid contributions from January 1, 1998 to December 31, 2002 pursuant to the July 2003 audit;
 - b. the unpaid contributions for temporary employees from January 1, 1997 to the present;
 - c. interest on the unpaid contributions;
 - d. liquidated damages in an amount equal to the greater of interest on the unpaid contributions or 20% of the unpaid contributions;

- e. all costs and reasonable attorney fees incurred by the Pension Fund in connection with this action;
2. An order requiring Defendant to make contributions in the future to the New England Teamsters and Trucking Industry Pension Fund for all temporary employees performing work within the scope of collective bargaining agreements between Defendant and International Brotherhood of Teamsters, Local Union 379;
3. Ordering such other and further relief as this Court may deem just and proper.

Dated: April 25, 2005

Respectfully submitted,

Catherine M. Campbell
BBO #549397
Jonathan M. Conti
BBO # 657163
FEINBERG, CAMPBELL & ZACK, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976



Attorneys for Plaintiff

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles Langone, as Fund Manager of
the New England Teamsters and Trucking
Industry Pension Fund

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Waste Management of Massachusetts, Inc.

County of Residence of First Listed Plaintiff

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan M. Conti, Esq.
Feinberg, Campbell & Zack, P.C.
177 Milk Street, Boston, MA 02109
(617) 338-1976

Attorneys (If Known)

05 10821 RWZ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | DEF | DEF | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 412 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 413 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assul. Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment, & Enforcement of	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 154 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airlines Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 190 Other: Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 892 Economic Stabilization Act	
		<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 893 Environmental Matters	
		<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 894 Energy Allocation Act	
		<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 895 Freedom of Information Act	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAXSUITS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 900 Appeal of Fee Determinations
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> Equal Access to Justice
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DWP/C/DIW W (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 240 Torts in Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSD Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RS1 (405(g))	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

(PLACE AN "X" IN ONE BOX ONLY)

V. ORIGIN

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from another district
(specify)

- 4 Reinstated or
 5 Reopened

- 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

(cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Do not cite jurisdictional statutes unless diversity.)

Action by Pension Fund under ERISA 29 U.S.C. Sec. 1001 et seq. to collect delinquent contributions.

VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION
COMPLAINT: UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

None

JUDGE
E

DOCKET NUMBER

DATE

4/25/05

FOR OFFICIAL USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Jonathan M. Conti, Esq.

RECEIPT #

AMOUNT

APPLYING JFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) _____
 Langone, Fund Manager v. Waste Management of Massachusetts, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

05 10821 RWZ

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jonathan M. Conti

ADDRESS Feinberg, Campbell & Zack, P.C., 177 Milk Street, Boston, MA 02109

TELEPHONE NO. (617) 338-1976